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AN EMPIRICAL STUDY ON THE ENFORCEABILITY OF THE MEASURES PRESCRIBED UNDER THE POSH ACT IN INDIA

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CHAPTER I: ABSTRACT

The Prevention of Women from Sexual Harassment Act, 2013 was enacted after the landmark judgment of Vishaka v. State of Rajasthan. The Act was enacted to provide various guidelines for the protection of women in the workplace. This paper tries to analyze the admissibility of the measures prescribed under the Act by various establishments. The establishments need to create a Committee for Complaints as well as a committee for redressal. The data will be collected through a questionnaire from various employees working in a company or establishment to get an idea if they have such Committees constituted for the protection of women. The research gives the answer about the rate of enforceability of the measures that are prescribed by the POSH Act.

Keywords: Sexual Harassment, Crime, Statistics, Guidelines

RELEVANCE OF THE STUDY

The crime rate is not significantly decreasing day to day even after the presence of various legislations for the protection of women. In such cases, the enforceability of the legislation is questioned. This paper tries to analyze the problems of the improper enforceability of the POSH Act in India. It is important to understand the problems for the reduction of crime against women in the workplace.

OBJECTIVES

The objectives of this research paper are:

1. To analyze the measures prescribed by the Act.
2. To understand the need and the non-proper enforceability of the POSH Act in India.

RESEARCH PROBLEM

The Act has been in force for a considerable period but also there are various cases of Sexual Harassment against women in the workplace. The paper tries to analyze the real reason for the same as it is due to lack of knowledge among the employees or the employers not adhering to the measures that are prescribed under the Act.

HYPOTHESIS

The cases of Sexual Harassment are not reducing at a significant rate even after the enforceability of the POSH Act due to the lack of knowledge of the protective measures by the employees as well as due to the violation of the guidelines by the employers.

RESEARCH METHODOLOGY

The research methodology used in this research paper is Empirical. The data is collected through a Questionnaire in the form of Google Form circulated across India.

RESEARCH QUESTIONS

- A. What are the measures that are prescribed under the POSH Act?
- B. What are the reasons for the low reduction in the cases of sexual harassment even after the enforceability of the POSH Act?

SAMPLE: The sample has been collected from 50 people from different age group which include 62% women and 38% male.

CHAPTER II: OVERVIEW OF THE POSH ACT

The United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW), which was adopted by the UN General assembly in 1979 and which is ratified by India often described as an international bill of human rights for women, it advocates for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural, and civil spheres. It underlines that discrimination and attacks on women's dignity violate the principle of equality of rights.¹ Furthermore, no doubt there has been a steady increase in the rate of women's employment in organized sectors in wide-ranging spheres and in many folds with the advent of rapid industrialization, modernization, economic development, and globalization. However, it has led to many evil practices such as physical and mental harassment, gender discrimination, and more specifically sexual harassment in the workplace.² Sexual harassment is a superfluous annoyance of sexual requirements in the context of the relationship of unequal power³ which includes physical contact, demand for sexual favours, showing colored remarks pornography even verbal and non-verbal conduct of a sexual nature.⁴ By sexual harassment, the women experience both physical and mental torture. The sexual harassment has taken new shapes while women have entered in the workforce. The colleagues and supervisors left no stone unturned to harass the women at the workplace on a wide range and scale.⁵ Sexual harassment is widely considered emotionally impudent which creates an atmosphere of unhealthy and less productive outcomes at the workplace In this sense it has been recognized globally as the most frightening form of violence for a very long.⁶ Sexual harassment in all its configurations is not easy to define. The Equal Employment Opportunity Commission in the United States has developed a useful definition of sexual harassment in the following way, "Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of sexual nature constitute sexual harassment when:

¹ H. O. Agarwal, "International Law and Human Rights" 15th (Ed.), Central Law Publication, Allahabad, 211002, pp.494-496, 2008

² S. C. Srivastava, "Sexual Harassment of Women at Workplace: Law and Policy", Indian Journal of Industrial Relations, Vol. 39, No. 3, pp. 364-390, 2004.

³ C. MacKinnon, "Sexual Harassment of Working Women: A Case of Sex Discrimination", New Haven, Yale University Press, 1979

⁴ Section 2(n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁵ G.S. Venumadhava, M. Tejashwini, "Sexual Harassment of Women at workplace", International journal of advanced research, Volume 3, Issue 5, pp. 1136-1139, 2015

⁶ A. Thomas, "Incidents of Sexual Harassment at Educational Institutions in India: Preventive Measures and Grievances Handling", International journal of Recent Advances in Multidisciplinary Research, vol.02, Issue 03, pp. 0317-0322, 2015

- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual".⁷ No doubt sexual harassment is such a cruel offense that every woman has experienced it at some point of instance may be either in the office or on their way to work. Every affected woman who has faced this crime is never let to loud the incident in public if they do so they are subject to worst crimes like assault, rape, acid attack etc. And surely these incidents led to the devaluation of women and the domination of men.⁸

Sec 2(n) of the Act provides for the definition of Sexual Harassment as:

- a) Physical contact and advances
- b) Asking for sexual favors
- c) Showing pornography
- d) Sexual colored remarks
- e) Any other unwelcome verbal, or non-verbal conduct of a sexual nature

The Act provides various guidelines that need to be performed by the Employers. The research paper focuses on the enforceability of mainly 3 measures that are prescribed under the Act.

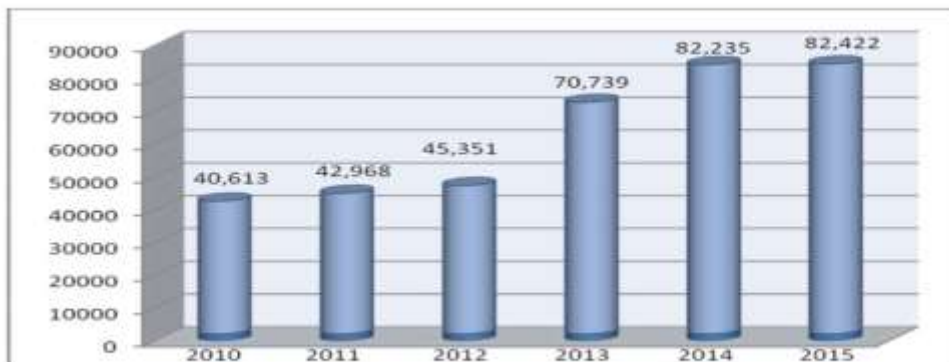
- 1) Legal Awareness Programme
- 2) Internal Complaints Committee
- 3) Workshops, Mock Drills and Seminars

There is no significant reduction in the cases of sexual harassment from the year 2013 i.e., since the inception of the Act. The reports on the cases of sexual harassment are shown in the following two graphs.

⁷ J. H. Joshi, J. Nachison, "Sexual Harassment in the Workplace How to Recognize; How to Deal It", CGIAR GENDER PROGRAM, working paper, No. 13, 1996.

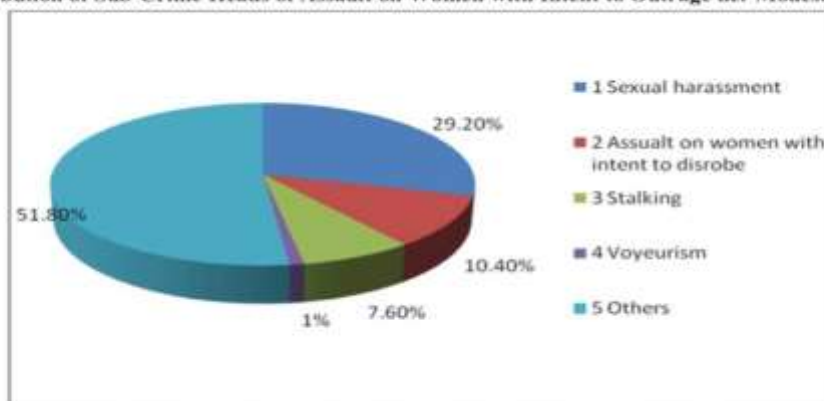
⁸ M. P. J. Pereira, E. J. Rodrigues, "Sexual Harassment at Workplace in India Medico Legal Aspects", J Indian Forensic Med, October-December 2014, Vol.306, No. 4, 2014

Fig. 1. Cases registered under Assault on Women with Intent to Outrage her/their Modesty during 2010-2015



Source: National Crime Records Bureau Report 2015, Chapter 5.

Fig. 2. Distribution of Sub-Crime Heads of Assault on Women with Intent to Outrage her Modesty during 2015

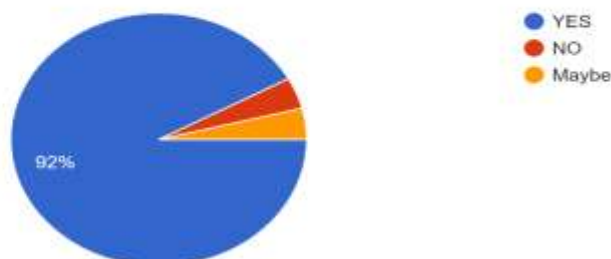


Source: National Crime Records Bureau Report 2015, Chapter 5.

This paper tries to analyze the reasons for the low enforcement of the provisions of the Act and the real reason for the low reduction. The problem lies both from the side of the Employer and the employees. The guidelines although binding on the employer sometimes don't they do not follow the guidelines or the measures prescribed under the Act and the false and malicious complaints under Sec 14 of the Act make it difficult to protect the women who seriously suffer sexual harassment.

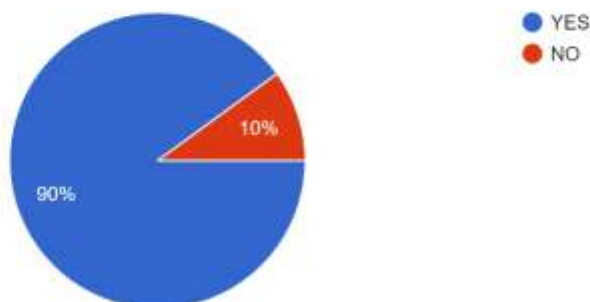
Do you know about the Act called " Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal Act, 2013

50 responses



Are there any Female Employees working with you or if you are a student do you have female working teachers?

50 responses

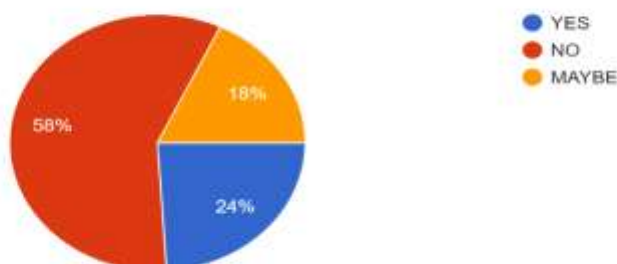


The above two graphs show that there is still a minority who don't know about the presence of the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act, 2013 and there are majority people where their co-workers are female employees.

There is a significant number of people who states that they have witnessed sexual harassment case against themselves or the persons around them.

Have you ever witnessed any case of sexual harassment against female employees?

50 responses



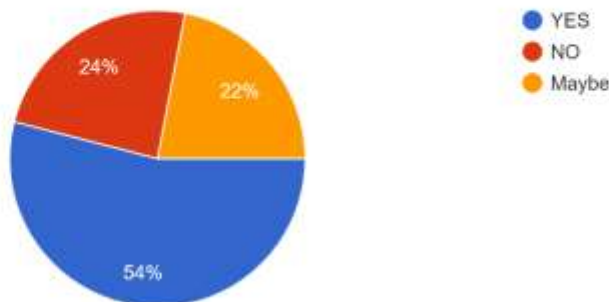
CHAPTER III: MEASURES UNDER THE ACT

1. Legal Awareness Programme

The employer under Sec. 19 of the Act is bound to conduct legal awareness programs for the employees so that they are aware of the consequences and the steps taken by them in case of any act committed against them.

Do the employers or the school management organize any awareness programs or workshops regarding Sexual Harassment in the workplace or schools or colleges?

50 responses

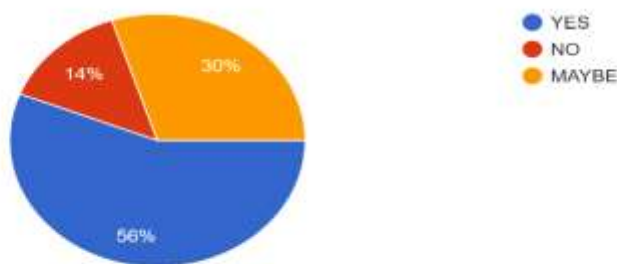


2. Policy

The employers are expected to frame a policy describing the rules and regulations to protect female employees against cases of sexual harassment. From the data collected it has been observed that 14% of the people from the sample don't have the presence of the policy at different workplaces.

Is there any policy that states the procedure that the employee can resort to in case of harassment in your workplace or schools or colleges?

50 responses

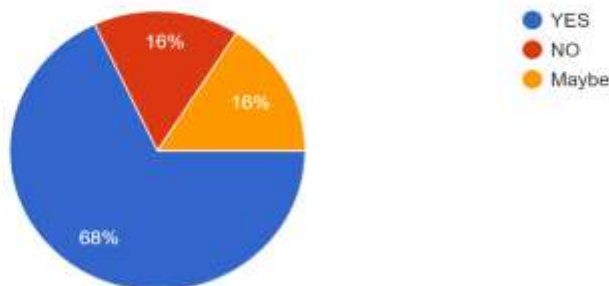


3. Internal Complaints Committee

The Employers are bound to form an Internal Complaints Committee under Sec.4 of the Act and a Local Complaints Committee under Sec 6 of the Act. In the sample collected, it has been seen that the majority have constituted the Complaints committee but there are certain establishments as well where the committee is still not formed and 165 people are there who are not sure about the formation of the committee which means even if the committee is constituted it is not working effectively.

Does your workplace or school or colleges have a committee to listen to the complaints of women regarding Sexual Harassment?

50 responses

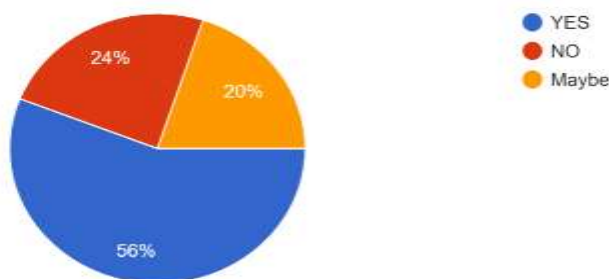


4. Redressal Committee

The redressal Committee is the committee that listens to the grievances of the persons and tries to find a solution or give them advice on the path they should choose to protect themselves and to punish the wrongdoers. In this case, the graph shows that 24% of workplaces don't have a redressal committee, and 20% state that there are chances of the formation of such a committee but they are not sure on the same which again questions the enforceability of the same.

Is there any redressal committee formed in your workplace or school or colleges?

50 responses



CHAPTER 1V: ANALYSIS and CONCLUSION

The situation above shows that there is still a lack of enforceability of the binding nature of the measures that are prescribed under the Act. It means that there are still various establishments that fail to either create an Internal Complaints Committee or conduct awareness programs and seminars. As seen through the data collected a big role for the low reduction in the cases of sexual harassment is due to the lack of the proper measures enforced by the employers.

It is also seen that the employees are also not aware of their rights and lack awareness as seen above where it was found that only 92% of the people were aware of the Act.

In conclusion, The Supreme Court Guidelines issued in 1997 prohibiting sexual harassment at the workplace, though legally binding on all employers, are not implemented in many establishments and institutions. At present the statistics of reported crimes against women are available with states and the central government. However, there is no proper classification of the available data and there is no separate category for sexual harassment at the workplace. Moreover, several cases of sexual harassment of women at workplaces remain unreported to the police. As a result, the available data do not reflect the realities in the field.

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